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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

Sally C. Purser,)	
)	MOTION TO FILE SUPPLEMENTAL BRIEF
Plaintiff,)	
)	
v.)	
)	
Josef F. Boehm, Allen K.)	
Bolling, and Bambi Tyree,)	
)	
Defendants.)	CASE NO.: A05-0085 (JKS)
)	
)	
)	

I. DEFENDANT BOEHM SEEKS PERMISSION FROM THE COURT TO FILE A SUPPLEMENTAL BRIEF REGARDING HIS REPLY IN OPPOSITION TO SUMMARY JUDGMENT.

On December 14, 2006, Plaintiff Purser filed a Motion for Summary Judgment. (See Docket No. 123). This document is attached and marked Exhibit A.

On December 29, 2006, Defendant Boehm filed a Response in Opposition to Summary Judgment. (See Docket No. 130). This document is attached and marked Exhibit B.

1 Due to newly obtained transcripts, sworn declarations, and
2 sworn testimony, Defendant Boehm respectfully requests to file a
3 supplemental brief. It is attached and marked Exhibit C. The
4 supplemental brief contains the following:

5 **1. Recorded transcript of Miranda Ditullio**

6 Ms. Ditullio submitted to a interview with Boehm's
7 investigator Terry Shertliff. Her statements contradict Purser's
8 allegations and lend further support to the evidence presented in
9 Boehm's initial opposition.

10 **2. Sworn Testimony of Dr. Jacobsen**

11 In response to Plaintiff's assertion that Dr. Jacobsen's
12 report is not sworn testimony, Boehm submits Dr. Jacobsen's sworn
13 testimony confirming the contents of his report.

14 **3. Declaration of Josef Boehm**

15 In response to Plaintiff's assertion that Boehm's responses to
16 discovery are not sworn under penalty of perjury, Boehm submits a
17 declaration specifically denying each of the allegations set forth
18 in the affidavit of Purser and Tyree.

19 **4. Declaration of Terry Shurtleff**

20 Mr. Shurtleff's declaration under penalty of perjury sets
21 forth the circumstances under which his interviews were knowingly
22 recorded, accurately recorded and accurately transcribed.

23 **5. Plaintiff's Expert Dr. Rose, Psychological Evaluation of**
24 **Purser.**

Boehm submits Dr. Rose's report to bring out her inconsistent statements and lack of candor when being interviewed by her own expert. In addition, Dr. Rose's report is very telling when describing Purser's psychological state and character type.

II. UNDER LOCAL RULE 7.1(h)(B)(i) AND (ii), THE COURT SHOULD GRANT DEFENDANT BOEHM'S REQUEST TO FILE A SUPPLEMENTAL BRIEF.

In considering whether to allow a party to file a supplemental brief, the court will consider "(i) whether the material was available to the party when briefs were due, and (ii) whether the pertinence of the material was established at the times for briefing." See Local Rule 7.1(h)(B)(i) and (ii).

"The standard for granting leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply." *Lewis v. Rumsfeld*, 154 F.Supp.2d 56, 61 (2001). In *Alexander*, the court granted motion for leave to file a surreply where the reply included a declaration that was not included in her original motion, which raised "matters presented to the court for the first time." *Alexander v. Federal Bureau of Investigation*, 186 F.R.D. 71, 74 (D.D.C.1998).

Throughout Plaintiff Purser's reply to Boehm's Opposition to Summary Judgment, she makes arguments that Boehm's submitted affidavits and statements are not sworn and thus not admissible. Here, Defendant Boehm has gained access to the sworn affidavits and testimony and seeks to submit them. If Boehm is not allowed to submit the sworn affidavits and testimony, he would be unable to

1 contest matters presented to the court for the first time in
2 Plaintiff Purser's reply.

3
4 **III. CONCLUSION**

5 Defendant Boehm respectfully requests the permission of the
6 court to file a supplemental brief to docket number 123.

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9 DATED this 1st day of February, 2007 at Encino, California.

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